THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.M.P.No.7327 of 2007 in
W.P. No.26557 of 1999

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The instant writ petition has come up before us again for consideration under the caption "For being mentioned".

We heard the learned senior counsel for the writ petitioners and the learned counsel appearing for the respondents.

The instant writ petition has come up for consideration before this Court along with two other writ petitions, W.P.Nos.21300 and 21301 of 1999. By means of a common judgment, this Court allowed the other two writ petitions and remitted the matters to the Special Court for fresh consideration in accordance with law, while dismissing the instant writ petition.

It is the contention of the learned senior counsel for the petitioners that the instant writ petition ought to have been allowed along with other two writ petitions and the Special Court ought to have been directed to return the suit to the civil Court, whereat it was originally instituted before its transfer to the Special Court for adjudication along with the other two L.G.Cs., inasmuch as the subject matter covered by all the writ petitions is one and the same.

Writ Petition No.26557 of 1999 was filed assailing the orders passed by the Special Court in L.G.C.No.258 of 1995. Originally the writ petitioners in W.P.No.26557 of 1999 filed the Civil Suit in O.S.No.1025 of 1995 on the file of the X Assistant Judge, City Civil Court, Hyderabad. Relief sought for *inter alia* in the plaint was the relief of perpetual injunction. When L.G.C. Nos.115 and 116 of 1995 were filed before the Special Court, the Special Court directed the

transfer of the suit, O.S.No.1025 of 1995 from the file of the X Assistant Judge, City Civil Court, Hyderabad, to its file for trying the same along with L.G.C. Nos.115 and 116 of 1995, inasmuch as the subject matter covered by both the L.G.Cs. is part and parcel of the subject matter covered by O.S.No.1025 of 1995. Eventually, the Special Court allowed the L.G.C.Nos.115 and 116 of 1995 while dismissing L.G.C.No.258 of 1995, formerly O.S.No.1025 of 1995. Assailing those orders, as aforesaid, three writ petitions were filed before this Court. This Court while allowing the Writ Petition Nos.21300 and 21301 of 1999, dismissed the Writ Petition No.26557 of 1999.

It is the contention of the learned senior counsel that the findings given in the judgment of the Special Court might operate against the interests of the writ petitioners in W.P.No.26557 of 1999 while adjudicating the L.G.C.Nos.115 and 116 of 1995 afresh by the Special Court, pursuant to the remand order of this Court. I see every force in the contention of the learned counsel and the error that has been crept in due to inadvertence in dismissing the Writ Petition No.26557 of 1999. In ordinary course, all the three writ petitions should have been allowed and the matter should have been remitted to the Special Court to take its own decision in all the three matters, including the question of jurisdiction raised on either side.

The learned counsel at this stage seeks to contend that since the subject matter covered by the suit O.S.No.1025 of 1995 is in an extent of Acs.2.00 and odd and the subject matter covered by L.G.C. Nos.115 and 116 of 1995 is only a part of it and as parties are also different in the sense that there are some other third parties also in the suit, apart from the petitioners in L.G.C.Nos.115 and 116 of 1995, still the civil Court can decide that matter and therefore it is expedient in the interest of justice to direct the Special Court to remit the suit to the civil Court for adjudication. That may create chaos in the sense that if two different fora are asked to adjudicate the matters before it, those fora may adjudicate the same in different fashion giving conflicting

findings, although in respect of a bit of the land. Therefore, such a contention cannot be accepted. Instead, it is expedient to allow the Special Court to take its own decision including the question of jurisdiction in all the matters so that the conflict can be avoided.

In the result, we recall the order dated 21-12-2006 passed by us pertaining to Writ Petition No.26557 of 1999 and allow the Writ Petition and remit the matter to the Special Court to be tried along with L.G.C.Nos.115 and 116 of 1995. The Special Court can also advert to the question of its jurisdiction in the said L.G.C. and decide the same along with the other two L.G.Cs. The Special Court may consider of expediting the matters having regard to the fact that more than a decade has been elapsed since the date of filing the L.G.Cs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

20th June, 2007.

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